

Assembly Bill No. 456

CHAPTER 797

An act to add Chapter 8 (commencing with Section 1923) to Title 4 of Part 4 of the Civil Code, and to add Section 818.10 to the Government Code, relating to real property.

[Approved by Governor October 8, 1997. Filed
with Secretary of State October 9, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 456, Ducheny. Real property: reverse mortgages.

Existing law provides for the regulation of various real estate loans such as conventional mortgages and shared appreciation loans for seniors.

This bill would provide for the regulation of defined reverse mortgages, executed on or after January 1, 1998. It would require all reverse mortgages to comply with its provisions. In addition to other changes, the bill would also require the loan applicant to receive a prescribed statement before entering into a reverse mortgage loan. The bill would specify that reverse mortgage loan payments shall not be considered income for purposes of determining eligibility and benefits under means-tested programs of aid to individuals, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Chapter 8 (commencing with Section 1923) is added to Title 4 of Part 4 of the Civil Code, to read:

CHAPTER 8. REVERSE MORTGAGES

1923. For purposes of this chapter, "reverse mortgage" means a nonrecourse loan secured by real property that meets all of the following criteria:

(a) The loan provides cash advances to a borrower based on the equity or the value in a borrower's owner-occupied principal residence.

(b) The loan requires no payment of principal or interest until the entire loan becomes due and payable.

(c) The loan is made by a lender licensed or chartered pursuant to the laws of this state or the United States.

1923.2. A reverse mortgage loan shall comply with all of the following requirements:

(a) Prepayment, in whole or in part, shall be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges that would have otherwise been due upon the reverse mortgage being due and payable.

(b) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(c) A reverse mortgage may include costs and fees that are charged by the lender, or the lender's designee, originator, or servicer, including costs and fees charged upon execution of the loan, on a periodic basis, or upon maturity.

(d) If a reverse mortgage loan provides for periodic advances to a borrower, these advances shall not be reduced in amount or number based on any adjustment in the interest rate.

(e) A lender who fails to make loan advances as required in the loan documents, and fails to cure an actual default after notice as specified in the loan documents, shall forfeit to the borrower treble the amount wrongfully withheld plus interest at the legal rate.

(f) The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(1) The home securing the loan is sold or title to the home is otherwise transferred.

(2) All borrowers cease occupying the home as a principal residence, except as provided in subdivision (h).

(3) Any fixed maturity date agreed to by the lender and the borrower occurs.

(4) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

(g) Repayment of the reverse mortgage loan shall be subject to the following additional conditions:

(1) Temporary absences from the home not exceeding 60 consecutive days shall not cause the mortgage to become due and payable.

(2) Extended absences from the home exceeding 60 consecutive days, but less than one year, shall not cause the mortgage to become due and payable if the borrower has taken prior action which secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents.

(3) The lender's right to collect reverse mortgage loan proceeds shall be subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement.

(4) The lender shall prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(h) The first page of any deed of trust securing a reverse mortgage loan shall contain the following statement in 10-point boldface type: “This deed of trust secures a reverse mortgage loan.”

1923.3. A reverse mortgage shall constitute a lien against the subject property to the extent of all advances made pursuant to the reverse mortgage and all interest accrued on these advances, and that lien shall have priority over any lien filed or recorded after recordation of a reverse mortgage loan.

1923.4. For the purposes of this chapter, a property shall be deemed to be owner-occupied, notwithstanding that the legal title to the property is held in the name of a trust, provided that the occupant of the property is a beneficiary of that trust.

1923.5. (a) No reverse mortgage loan application shall be taken by a lender unless the loan applicant has received from the lender the following plain language statement in conspicuous 16-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan:

IMPORTANT NOTICE

TO REVERSE MORTGAGE LOAN APPLICANT

THE REVERSE MORTGAGE WHICH YOU ARE
CONSIDERING:

- ☐ DOES
- ☐ DOES NOT

REQUIRE THAT YOU PURCHASE AN ANNUITY IN
CONNECTION WITH THE REVERSE MORTGAGE
TRANSACTION.

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION THAT PROVIDES A MEANS OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.



AS IS TRUE BEFORE ENTERING INTO ANY COMPLEX FINANCIAL ARRANGEMENT, IT IS WISE TO SEEK THE COUNSELING AND ADVICE OF APPROPRIATE PROFESSIONALS SUCH AS ATTORNEYS, FINANCIAL ADVISERS, AND ACCOUNTANTS. COUNSELORS TRAINED ON REVERSE MORTGAGES MAY ALSO BE AVAILABLE. YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY FOR FINANCIAL ADVICE.

(b) Before giving the prospective borrower the statement described in subdivision (a), the lender shall mark the appropriate box concerning annuity requirements.

1923.6. The lender shall be presumed to have satisfied any disclosure duty imposed by this chapter if the lender provides a disclosure statement in the same form as provided in this chapter.

1923.7. No arrangement, transfer, or lien subject to this chapter shall be invalidated solely because of the failure of a lender to comply with any provision of this chapter. However, nothing in this section shall preclude the application of any other existing civil remedies provided by law.

1923.9. (a) To the extent that implementation of this section does not conflict with federal law resulting in the loss of federal funding, reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(b) Undisbursed reverse mortgage funds shall be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(c) This section applies to any law or program relating to payments, allowances, benefits, or services provided on a means-tested basis, by this state, including, but not limited to, optional state supplements to the federal supplemental security income program, low-income energy assistance, property tax relief, general assistance, and medical assistance only to the extent this section does not conflict with Title 19 of the federal Social Security Act.

(d) For the purposes of this section, "means-tested programs and aid to individuals" includes, but is not limited to, programs set forth in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9, and Part 5 (commencing with Section 17000) of Division 9, of the Welfare and Institutions Code.



1923.10. This chapter shall only apply to those reverse mortgage loans executed on or after January 1, 1998.

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